

# EXHIBIT 4

MERIAM SHAW - January 18, 2017

1                               IN THE UNITED STATES DISTRICT COURT  
2                               FOR THE SOUTHERN DISTRICT OF TEXAS  
3                               HOUSTON DIVISION  
4       MERIAM SHAW                               )  
  )  
      VS.   ) CIVIL ACTION NO.  
  ) 4:16-CV-01163  
      KROGER TEXAS, LP                            )

11 ORAL AND VIDEOTAPED DEPOSITION OF  
12 MERIAM SHAW  
13 JANUARY 18, 2017  
14 VOLUME 1 OF 1

20 ORAL DEPOSITION OF MERIAM SHAW, produced as a witness,  
21 duly sworn by me at the instance of the Defendant, taken  
22 in the above-styled and numbered cause on January 18,  
23 2017, from 10:26 a.m. to 1:45 p.m., before Mylinda Tubbs  
24 Faircloth, Certified Shorthand Reporter No. 2896 in and  
for the State of Texas, via machine shorthand, at the  
Law Offices of Peter Costea, 2603 Augusta, Suite 880,  
Houston, Texas 77057, pursuant to the Federal Rules of  
Civil Procedure and any provisions stated on the record.

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<p style="text-align: right;">34</p> <p>1 essential functions of the position for which you are</p> <p>2 applying as they are listed in the job posting with or</p> <p>3 without reasonable accommodation?" And you checked</p> <p>4 "yes." Do you see that?</p> <p>5 <b>A. Yes. At the time, yes.</b></p> <p>6 <b>Q. Okay.</b></p> <p>7 <b>A. I -- I never planned on getting pregnant. I</b></p> <p>8 <b>-- I had two kids. I only want one girl and one boy and</b></p> <p>9 <b>that's it. I never planned on having another one.</b></p> <p>10 <b>Q. Okay. But you did -- you did have an</b></p> <p>11 <b>opportunity to see what the job requirements would be,</b></p> <p>12 <b>correct?</b></p> <p>13 <b>A. Yes.</b></p> <p>14 <b>Q. All right. And you -- and you understood that</b></p> <p>15 <b>those job requirements, for example, would include</b></p> <p>16 <b>lifting?</b></p> <p>17 <b>A. Yes.</b></p> <p>18 <b>Q. And you've been in a grocery store before,</b></p> <p>19 <b>right?</b></p> <p>20 <b>A. I've been, but I never worked for a grocery</b></p> <p>21 <b>store before.</b></p> <p>22 <b>Q. But you went shopping before you --</b></p> <p>23 <b>A. I went shopping before.</b></p> <p>24 <b>Q. -- you applied at Kroger. And you saw that --</b></p> <p>25 <b>that sackers and checkers have to lift things when they</b></p>	<p style="text-align: right;">36</p> <p>1 <b>I was so proud of myself.</b></p> <p>2 <b>Q. Okay. Where -- where did that interview take</b></p> <p>3 <b>place?</b></p> <p>4 <b>A. In the Kroger, I don't know exactly the other,</b></p> <p>5 <b>but it was in -- at one store of Kroger. It's not in</b></p> <p>6 <b>Garth Road. It's not in Baytown. It's somewhere else.</b></p> <p>7 <b>Q. Okay. So it's a store different from the one</b></p> <p>8 <b>that you ended up working at?</b></p> <p>9 <b>A. Yes, it's different.</b></p> <p>10 <b>Q. What else do you remember about the interview?</b></p> <p>11 <b>A. I remember that -- that she offered a job for,</b></p> <p>12 <b>would you -- would I like to work for a dairy</b></p> <p>13 <b>department, meat department, and there was night --</b></p> <p>14 <b>night clerk. And there was -- and I -- and I said, I</b></p> <p>15 <b>can't work for night or in a cold area. I don't want to</b></p> <p>16 <b>leave my babies at night, so -- and she said, you know,</b></p> <p>17 <b>What about just courtesy clerk, which is bagger, and I</b></p> <p>18 <b>said okay.</b></p> <p>19 <b>Q. Why did -- why didn't you want to work where</b></p> <p>20 <b>it's cold? Just a personal preference, or did -- was</b></p> <p>21 <b>there a reason?</b></p> <p>22 <b>A. Yeah, it's personal preference. I'm from the</b></p> <p>23 <b>Philippines.</b></p> <p>24 <b>Q. Okay.</b></p> <p>25 <b>A. I'm not used to that.</b></p>
<p style="text-align: right;">35</p> <p>1 go through the lines, right?</p> <p>2 <b>A. Yes.</b></p> <p>3 <b>Q. If you turn to Bates No. 7, and it says "hire</b></p> <p>4 <b>date" of "March 10th, 2014." Do you see that?</b></p> <p>5 <b>A. Uh-huh.</b></p> <p>6 <b>Q. Does that -- that sound correct to you?</b></p> <p>7 <b>A. Yes.</b></p> <p>8 <b>Q. Okay. So you applied on March 5th and you</b></p> <p>9 <b>were hired on March 10th?</b></p> <p>10 <b>A. Yes.</b></p> <p>11 <b>Q. Were you interviewed?</b></p> <p>12 <b>A. Yes.</b></p> <p>13 <b>Q. Who interviewed you?</b></p> <p>14 <b>A. What's her name? I forgot her name.</b></p> <p>15 <b>Q. If I told you Tiffany --</b></p> <p>16 <b>A. Yes.</b></p> <p>17 <b>Q. -- would that sound right?</b></p> <p>18 <b>A. Yes, Ms. Tiffany.</b></p> <p>19 <b>Q. Tell me about the interview.</b></p> <p>20 <b>A. It was -- it was accomplishing. It was -- we</b></p> <p>21 <b>were, like -- if I'm not mistaken, we were 10</b></p> <p>22 <b>applicants. And it was a group interview and it took,</b></p> <p>23 <b>like, two hours or something. And she even made us</b></p> <p>24 <b>make, like, make a role play of, How would you sell, you</b></p> <p>25 <b>know, this muffin or, you know, and I did -- I did good.</b></p>	<p style="text-align: right;">37</p> <p>1 <b>Q. Okay. So you were allowed to pick the</b></p> <p>2 <b>position that you --</b></p> <p>3 <b>A. Yes.</b></p> <p>4 <b>Q. -- wanted to -- okay -- to get?</b></p> <p>5 <b>Let me finish my question.</b></p> <p>6 <b>A. Oh, sorry.</b></p> <p>7 <b>Q. It will be better for her.</b></p> <p>8 <b>A. Okay. I'm so sorry.</b></p> <p>9 <b>Q. That's okay. So you ended up choosing to be a</b></p> <p>10 <b>courtesy clerk?</b></p> <p>11 <b>A. Yes.</b></p> <p>12 <b>Q. And did you understand what that job would</b></p> <p>13 <b>require?</b></p> <p>14 <b>A. Yes, of course. I was happy, you know.</b></p> <p>15 <b>Q. But you were told that you would have to push</b></p> <p>16 <b>baskets, for example?</b></p> <p>17 <b>A. Yes, of course.</b></p> <p>18 <b>Q. And pick up bags of groceries?</b></p> <p>19 <b>A. Yes.</b></p> <p>20 <b>Q. And pick up, you know, bags of dog food or cat</b></p> <p>21 <b>food, whatever customers bring through the line, right?</b></p> <p>22 <b>A. Yes.</b></p> <p>23 <b>Q. Were you hired to be part-time or full-time?</b></p> <p>24 <b>A. Part-time.</b></p> <p>25 <b>Q. Was there any discussion of how many hours a</b></p>

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<p style="text-align: right;">50</p> <p>1 Q. And in your charge you say that on March 15th</p> <p>2 you discovered that you were pregnant.</p> <p>3 A. Oh, one day, yes.</p> <p>4 Q. Yeah. So sitting here right now, you don't</p> <p>5 remember if it was the 15th or the 16th; is that right?</p> <p>6 A. That -- that's right.</p> <p>7 Q. Okay. This says the next day you informed</p> <p>8 Marsha, the supervisor, that you were pregnant. Do you</p> <p>9 know if that's correct?</p> <p>10 A. Yes.</p> <p>11 Q. You think that's right?</p> <p>12 A. Because she asked me.</p> <p>13 Q. Okay. And you don't know whether it was a</p> <p>14 little bit later -- later that week?</p> <p>15 A. No, it was that -- that day because it spread</p> <p>16 quick, when I told the cashier and everybody knows.</p> <p>17 Q. Okay. How long was it between the time that</p> <p>18 you talked to Marsha and then you talked to Mr. G and he</p> <p>19 told you to get a doctor's note?</p> <p>20 A. It's between a week, like, five days, maybe.</p> <p>21 I don't know. I can't remember exact date. But during</p> <p>22 those weeks it's -- it's just the -- that my pregnancy</p> <p>23 spread in the store. And then probably three, four days</p> <p>24 after I spoke with Marsha, Mr. G told me to get the</p> <p>25 note.</p>	<p style="text-align: right;">52</p> <p>1 right?</p> <p>2 A. No, not -- not at that time.</p> <p>3 Q. Okay. He didn't tell you that you -- you were</p> <p>4 going to have any negative impact on your job, correct?</p> <p>5 A. He did not.</p> <p>6 Q. Your testimony is he just asked you to get a</p> <p>7 note?</p> <p>8 A. I thought I just, you know, get the note and</p> <p>9 then, you know, keep working.</p> <p>10 Q. Did he give you a deadline or anything as to</p> <p>11 when you had to get the note?</p> <p>12 A. No, he didn't.</p> <p>13 Q. How long was it after that conversation that</p> <p>14 you made your appointment with the doctor?</p> <p>15 A. I called right away when I got home and set an</p> <p>16 appointment.</p> <p>17 Q. Okay.</p> <p>18 A. And then she said -- she said she can -- I can</p> <p>19 come see her on the 24th, and there she gave me a note.</p> <p>20 Q. Okay. All right. Well, let's talk about your</p> <p>21 doctor visit, which is back to Exhibit 3. And it's on</p> <p>22 Page 6 is the -- the part that I was going to ask you</p> <p>23 about. By the way, it has insurance as Medicaid at that</p> <p>24 point. So you were -- you were on Medicaid --</p> <p>25 A. Yes.</p>
<p style="text-align: right;">51</p> <p>1 Q. Okay. Tell me about that conversation.</p> <p>2 A. I just -- I went to bring back the stuff for</p> <p>3 the shelves, and then he kind of stopped me, saw me, you</p> <p>4 know. Hey, you know, I don't want to jeopardize -- I</p> <p>5 heard you're pregnant. Congratulations. I don't want</p> <p>6 to jeopardize your pregnancy so I would like you to get</p> <p>7 a note from your doctor.</p> <p>8 Q. Okay. And where did that conversation take</p> <p>9 place?</p> <p>10 A. Inside the store, the Garth Road store.</p> <p>11 Q. Okay. But was it, like, out on the sales</p> <p>12 floor? Was it in his office?</p> <p>13 A. Oh, no, it was just on the floor, sales floor.</p> <p>14 Q. Okay. Were there any witnesses to that</p> <p>15 conversation or was it just the two of you?</p> <p>16 A. I don't know if anybody heard us.</p> <p>17 Q. Do you remember where in the store that you</p> <p>18 were talking? Was it -- was it at the front end or on</p> <p>19 an aisle?</p> <p>20 A. It was in, like, a -- after the front, the</p> <p>21 cashier, like going to the -- to the aisles, in between.</p> <p>22 Q. How long did that conversation take place?</p> <p>23 A. It was quick. It wasn't really long</p> <p>24 conversation.</p> <p>25 Q. Okay. He didn't tell you that you were fired,</p>	<p style="text-align: right;">53</p> <p>1 Q. -- right? And it looks like it was an</p> <p>2 8:40 a.m. appointment. Does that sound right?</p> <p>3 A. Yes.</p> <p>4 Q. And if you turn to the next page, under Social</p> <p>5 History it says "occupation, homemaker."</p> <p>6 A. Uh-huh.</p> <p>7 Q. So you hadn't told --</p> <p>8 A. Oh, no, I -- I told her. I -- she asked me</p> <p>9 where -- where do I work. I -- I told her -- I told</p> <p>10 her, I work for Kroger.</p> <p>11 Q. Okay. Do you remember when -- when you --</p> <p>12 A. I'm a bagger in Kroger.</p> <p>13 Q. Okay. Do you remember when you told her that?</p> <p>14 A. That -- during that visit I told her.</p> <p>15 Q. Okay. If you look under -- on Page 7,</p> <p>16 Prenatal Flowsheet, there's a chart sort of in the</p> <p>17 middle there. Do you see that?</p> <p>18 A. Uh-huh.</p> <p>19 Q. And it says "27-year-old --"</p> <p>20 That's you, right?</p> <p>21 A. (Moving head up and down.)</p> <p>22 Q. "-- at 7.2 weeks by LMP here for confirmation</p> <p>23 of pregnancy visit. UPT positive." Do you see that?</p> <p>24 A. Uh-huh.</p> <p>25 Q. Okay. So you had been pregnant for a little</p>

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<p style="text-align: right;">54</p> <p>1 over seven weeks at this point, right?</p> <p>2 <b>A. I guess so.</b></p> <p>3 Q. At least that's what the doctor says?</p> <p>4 <b>A. That's what the doctor said.</b></p> <p>5 Q. All right. You don't have any reason to</p> <p>6 disagree with the doctor, right?</p> <p>7 <b>A. Yeah, that -- that's what she said.</b></p> <p>8 Q. Okay. So, again, just doing the math, I mean,</p> <p>9 that would -- that would put the baby's conception</p> <p>10 sometime -- if you look, you know, on the -- on the</p> <p>11 chart here on Exhibit 4, that would put the baby's</p> <p>12 conception sometime around February 2nd.</p> <p>13 <b>A. Okay.</b></p> <p>14 Q. Do you have any reason to disagree with that?</p> <p>15 <b>A. That means my -- I was pregnant?</b></p> <p>16 Q. That's what the doctor said, that you were</p> <p>17 pregnant for a little over seven weeks.</p> <p>18 <b>A. If that's what she said. I don't know that I</b></p> <p>19 <b>-- I was pregnant.</b></p> <p>20 Q. Okay. And you've been pregnant twice before,</p> <p>21 right?</p> <p>22 <b>A. Yes.</b></p> <p>23 Q. You've been through two pregnancies, correct?</p> <p>24 <b>A. Yes.</b></p> <p>25 Q. Do you -- do you remember when was your first</p>	<p style="text-align: right;">56</p> <p>1 <b>A. Because it's -- but I did not count the weeks.</b></p> <p>2 <b>It's been weeks I didn't have my period but I didn't</b></p> <p>3 <b>know it's been a month already. You know what I mean?</b></p> <p>4 <b>Like --</b></p> <p>5 Q. Okay. Well, I -- I would like to know what --</p> <p>6 what made you decide to go take a pregnancy test.</p> <p>7 <b>A. Because I'd been waiting for my period, and</b></p> <p>8 <b>until then I did not have the period.</b></p> <p>9 Q. Okay.</p> <p>10 <b>A. So...</b></p> <p>11 Q. How long was it overdue?</p> <p>12 <b>A. I don't know, probably five weeks, I don't</b></p> <p>13 <b>know. But sometimes you don't really -- sometimes</b></p> <p>14 <b>you're just delayed.</b></p> <p>15 Q. Okay. And you had no other indications that</p> <p>16 you were pregnant? You weren't feeling sick or anything</p> <p>17 like that?</p> <p>18 <b>A. No, I didn't feel sick.</b></p> <p>19 Q. So at the -- at this meeting or the</p> <p>20 appointment with -- with Dr. Lowery, did you talk to her</p> <p>21 about getting a note for work?</p> <p>22 <b>A. Yeah, I told her. I told her, My manager</b></p> <p>23 <b>asked me for a note; can you make me one? And she said,</b></p> <p>24 <b>Yeah. And then -- but then she asked what kind of job I</b></p> <p>25 <b>do.</b></p>
<p style="text-align: right;">55</p> <p>1 menstrual period that you missed in 2014 when you were</p> <p>2 pregnant?</p> <p>3 <b>A. It's -- you see, it's not -- it's not always</b></p> <p>4 <b>the same with period. I'm sure you have a wife. It's</b></p> <p>5 <b>not the same every --</b></p> <p>6 Q. I've never been through it before --</p> <p>7 <b>A. It's not --</b></p> <p>8 Q. -- so I'll defer to you.</p> <p>9 <b>A. It's not the same every month. And all the</b></p> <p>10 <b>pregnancy is not the same, as well. You have different</b></p> <p>11 <b>-- like, I was sick with my first baby. I wasn't sick</b></p> <p>12 <b>with my second baby. I was throwing up until, like,</b></p> <p>13 <b>seven months. But the second baby I never felt</b></p> <p>14 <b>anything. It was easy pregnancy. And that's the</b></p> <p>15 <b>difference so...</b></p> <p>16 Q. Okay. But you -- you would agree with me that</p> <p>17 you had missed at least one -- one period before March</p> <p>18 24th, correct?</p> <p>19 <b>A. I don't miss. I did not miss period.</b></p> <p>20 Q. Okay. So your testimony is that you had a --</p> <p>21 a menstrual period in February?</p> <p>22 <b>A. I cannot -- I cannot recall missing period.</b></p> <p>23 Q. Well, why -- why were you -- why did you think</p> <p>24 you were pregnant? What -- what tipped you off or what</p> <p>25 made you think that you were pregnant?</p>	<p style="text-align: right;">57</p> <p>1 Q. Okay. What did you tell her?</p> <p>2 <b>A. I told her, I'm a bagger.</b></p> <p>3 Q. Did she ask you, like, you know, what your job</p> <p>4 duties are?</p> <p>5 <b>A. Yes.</b></p> <p>6 Q. Those kinds of things?</p> <p>7 <b>A. She asked me, and I told her, I -- I bag</b></p> <p>8 <b>groceries and I push carts. That was --</b></p> <p>9 Q. Did you give her any -- I'm sorry. Go ahead</p> <p>10 and finish.</p> <p>11 <b>A. That's all I told her.</b></p> <p>12 Q. Did you give her any sort of job description</p> <p>13 or any sort of paper that described what your duties</p> <p>14 were?</p> <p>15 <b>A. No, I didn't bring anything.</b></p> <p>16 <b>(Exhibit No. 6 was marked.)</b></p> <p>17 Q. Okay. Ms. Shaw, I've handed you what's been</p> <p>18 marked as Exhibit 6 to your deposition. Have you seen</p> <p>19 that document before?</p> <p>20 <b>A. Yes.</b></p> <p>21 Q. Is this the note that Dr. Lowery gave to you?</p> <p>22 <b>A. Yes.</b></p> <p>23 Q. And she checked the part that says, "Patient</p> <p>24 may return to work on March 25th, 2014," which would</p> <p>25 have been the next day, right?</p>

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<p style="text-align: right;">58</p> <p>1       <b>A. Yes.</b></p> <p>2       Q. "With the following restrictions: Cannot --</p> <p>3 cannot lift anything greater than 15 pounds. Cannot</p> <p>4 push stacked shopping carts." Do you see that?</p> <p>5       <b>A. (Moving head up and down.)</b></p> <p>6       Q. Is that a "yes"?</p> <p>7       <b>A. Yes.</b></p> <p>8       Q. Did you have any discussion with her about</p> <p>9 these restrictions?</p> <p>10       <b>A. No.</b></p> <p>11       Q. Did she tell you why she was giving you these</p> <p>12 restrictions?</p> <p>13       <b>A. Because I had -- I had a -- I had two previous</b></p> <p>14 <b>--</b></p> <p>15       Q. C-sections?</p> <p>16       <b>A. -- C-sections, and the one was critical, the</b></p> <p>17 <b>first one.</b></p> <p>18       Q. Okay. So was -- was there some discussion</p> <p>19 that she was doing this because of these previous</p> <p>20 C-section surgeries and she was concerned?</p> <p>21       <b>A. Yeah.</b></p> <p>22       MR. COSTEA: Objection, form.</p> <p>23       Q. (By Mr. Barron) Did you have any discussion</p> <p>24 with her about whether you needed to lift more than 15</p> <p>25 pounds because that's what your job required?</p>	<p style="text-align: right;">60</p> <p>1       <b>In pain and I needed a break, but then Marsha told me --</b></p> <p>2 <b>and it was raining, and Marsha told me to push carts</b></p> <p>3 <b>anyway.</b></p> <p>4       Q. Was that before or after you had your doctor's</p> <p>5 note?</p> <p>6       <b>A. After I gave her the note.</b></p> <p>7       Q. Okay. And I want to ask about before, so</p> <p>8 let's just focus on before. So before you had your</p> <p>9 conversation with Mr. G and he told you to go get a</p> <p>10 note, had you ever had a situation at work where you</p> <p>11 said, I'm in pain, or I can't do something because of</p> <p>12 being pregnant?</p> <p>13       <b>A. I don't recall.</b></p> <p>14       Q. Okay.</p> <p>15       MR. BARRON: Let's take a break. We've</p> <p>16 been going about an hour.</p> <p>17       MR. COSTEA: Okay, thank you.</p> <p>18       MR. BARRON: If you could look that up</p> <p>19 on your phone --</p> <p>20       THE VIDEOGRAPHER: We're going off the</p> <p>21 record, approximately 11:30 a.m.</p> <p>22       (Brief recess.)</p> <p>23       THE VIDEOGRAPHER: We're coming back on</p> <p>24 the record, approximately 11:45 a.m.</p> <p>25       Q. (By Mr. Barron) Ms. Shaw, did you have an</p>
<p style="text-align: right;">59</p> <p>1       <b>A. No.</b></p> <p>2       Q. Anything else about that conversation with</p> <p>3 Ms. Lowery about the restrictions, that you can remember</p> <p>4 here today?</p> <p>5       <b>A. No.</b></p> <p>6       Q. After you received Exhibit 6 from your doctor,</p> <p>7 what did you do with it?</p> <p>8       <b>A. I gave it to Emelia.</b></p> <p>9       Q. Okay. Who is Emelia?</p> <p>10       <b>A. She's one of the supervisors.</b></p> <p>11       Q. Do you remember when that was?</p> <p>12       <b>A. The next -- the -- the day, 25th.</b></p> <p>13       Q. Did you have any physical restrictions with</p> <p>14 your previous pregnancies?</p> <p>15       <b>A. I never need a note so I don't -- I --</b></p> <p>16       Q. Did you work out --</p> <p>17       <b>A. They just say, Be careful.</b></p> <p>18       Q. Okay, sorry. Did you ever work during your</p> <p>19 two prior pregnancies?</p> <p>20       <b>A. No.</b></p> <p>21       Q. Prior to your conversation with Mr. G about</p> <p>22 needing a note, had you told anybody at Kroger that you</p> <p>23 -- that you couldn't do something because you were</p> <p>24 pregnant?</p> <p>25       <b>A. The only thing I can remember, I was -- I was</b></p>	<p style="text-align: right;">61</p> <p>1       opportunity to check your Facebook to see what date it</p> <p>2 was that you posted that?</p> <p>3       <b>A. Yes, I did.</b></p> <p>4       Q. Okay. What was that date?</p> <p>5       <b>A. March 10th.</b></p> <p>6       Q. March 10th?</p> <p>7       <b>A. 2014, yes.</b></p> <p>8       Q. Okay. Can you read what it says?</p> <p>9       <b>A. I said: Proud to be part of the team, with</b></p> <p>10 <b>the -- and I put the -- I took picture of the face of</b></p> <p>11 <b>the manual.</b></p> <p>12       Q. Okay. All right.</p> <p>13       MR. BARRON: I'll get a copy of that</p> <p>14 from you later.</p> <p>15       Q. (By Mr. Barron) And then you -- you also were</p> <p>16 going to check to see the date when you posted about</p> <p>17 being pregnant, finding out you were pregnant.</p> <p>18       <b>A. Oh, I posted it -- It's March 14th, 2014. And</b></p> <p>19 <b>it says: I don't know if I should be celebrating. I</b></p> <p>20 <b>got a job, but I found out I'm pregnant again. My</b></p> <p>21 <b>stomach is hurting from seven-and-a-half-hour shift</b></p> <p>22 <b>today. Just hoping for a healthy pregnancy, and</b></p> <p>23 <b>hopefully my babies will accept their little sister or</b></p> <p>24 <b>brother.</b></p> <p>25       Q. Okay. So was -- your stomach was hurting on</p>

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<p style="text-align: right;">66</p> <p>1 Q. How long after you clocked in was it that you</p> <p>2 talked to Emelia?</p> <p>3 A. It wasn't long, probably less than five</p> <p>4 minutes.</p> <p>5 Q. And you -- and you had the paper with you?</p> <p>6 A. Yes. I hand her the note.</p> <p>7 Q. And then what did you do immediately after</p> <p>8 handing her the note?</p> <p>9 A. She told me, I can't keep you. And then so I</p> <p>10 talked her into keeping me, because I -- I need a job.</p> <p>11 I need to pay our gas bill and stuff. And she -- and</p> <p>12 then she said, No, there's nothing here for you, blah,</p> <p>13 blah, blah. And then I said, I can still do my job</p> <p>14 and -- you know. And then she said that, Okay, go push</p> <p>15 carts. And then it was raining and I pushed carts.</p> <p>16 And then, like, probably I was 30</p> <p>17 minutes outside. And then Mr. Trenton, he's like a</p> <p>18 training supervisor, he saw me and said, Come back in</p> <p>19 because it's raining. But I want to prove to Emelia</p> <p>20 that I can still do my job.</p> <p>21 Q. Okay. If you need a break, you let me know.</p> <p>22 Okay?</p> <p>23 A. So I did it. And then Mr. Trenton called the</p> <p>24 guys to get the carts. And then so I went on break, I</p> <p>25 went -- I stand in the side and then Emelia said, Go</p>	<p style="text-align: right;">68</p> <p>1 Q. Were there umbrellas or something like a</p> <p>2 rain -- raincoats?</p> <p>3 A. Not at that time when I needed it.</p> <p>4 Q. Okay. Did you ask?</p> <p>5 A. I asked.</p> <p>6 Q. Who did you ask?</p> <p>7 A. Some of the guys, I don't remember him, but</p> <p>8 some of the guys that was there for a while. I -- I</p> <p>9 don't know, but I -- they said this -- this is where the</p> <p>10 jacket at but you have to bring your own jacket, but I</p> <p>11 didn't know --</p> <p>12 Q. Okay.</p> <p>13 A. -- so I did not have a jacket.</p> <p>14 Q. Did you ever ask management for a jacket or</p> <p>15 anything to help you get the carts in the rain?</p> <p>16 A. No, I -- I feel like I wasn't welcome anymore</p> <p>17 so I'm not gonna...</p> <p>18 Q. So the answer is, no, you didn't do that?</p> <p>19 A. I did not ask.</p> <p>20 Q. All right. So you were getting baskets for a</p> <p>21 while. Then what happened?</p> <p>22 A. Then Mr. Trenton called me to get inside</p> <p>23 because it's raining and -- and then he sent some guys</p> <p>24 to do it, bring carts inside the store.</p> <p>25 Q. And then what did you do?</p>
<p style="text-align: right;">67</p> <p>1 clock out and go home.</p> <p>2 Q. You would agree that your -- your doctor's</p> <p>3 note did allow you to -- to push carts, right? It just</p> <p>4 says you can't pushed stacked carts.</p> <p>5 A. Yes, I can push carts. That's why I told her</p> <p>6 that I can do my job.</p> <p>7 Q. Okay. So by -- for her to ask you to push</p> <p>8 carts wasn't violating your restrictions, right?</p> <p>9 A. It wasn't.</p> <p>10 Q. Okay.</p> <p>11 A. But it's, like, she is, like, Okay, then, go</p> <p>12 do it. And then even if it was raining, she -- she's</p> <p>13 being, I would say, insensitive.</p> <p>14 Q. Did she ever tell you specifically you have to</p> <p>15 go get carts in the rain?</p> <p>16 A. No, but she knows it was raining, and then she</p> <p>17 told -- she go -- told me anyway.</p> <p>18 Q. Was it --</p> <p>19 A. And I'm just a bagger so I do it.</p> <p>20 Q. Was it pouring or raining --</p> <p>21 A. Yeah, it's --</p> <p>22 Q. -- or how hard?</p> <p>23 A. Not that hard, but it was pouring, you know.</p> <p>24 And they were -- they did not have any -- they did not</p> <p>25 have any jackets to -- for us to use.</p>	<p style="text-align: right;">69</p> <p>1 A. I was just standing there. And then Emelia</p> <p>2 came up to me and said -- oh, I was going back to help</p> <p>3 the other guys. And then Emelia called me to the side</p> <p>4 -- to the side and said, Go clock out and go home.</p> <p>5 Q. I want to talk -- I want to direct your</p> <p>6 attention back to Exhibit 5, which is your EEOC charge.</p> <p>7 Do you see that? Go ahead and find it. Do you see your</p> <p>8 charge?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. And if you look down at the bottom it</p> <p>11 says, "I declare under penalty of perjury that the above</p> <p>12 is true and correct," right?</p> <p>13 A. Yes.</p> <p>14 Q. So you swore to tell the truth in this charge,</p> <p>15 didn't you?</p> <p>16 A. Yes.</p> <p>17 Q. And if you look in the middle where it says --</p> <p>18 it talks about your conversation with Emelia. "I told</p> <p>19 her that I can still do my job, such as bagging</p> <p>20 groceries and pushing not more than six carts at a time.</p> <p>21 I went and brought carts back to the store but then I</p> <p>22 rested because I felt some pain. I clocked out, and</p> <p>23 then I went upstairs to talk to the head manager,</p> <p>24 Mr. G." It does not say in your charge that Emelia told</p> <p>25 you to go home, does it?</p>

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<p style="text-align: right;">70</p> <p>1 <b>A. I missed putting that, but he -- she did.</b></p> <p>2 <b>That's why -- I wouldn't clock out because I was still</b></p> <p>3 <b>on the schedule, but she told me to clock out.</b></p> <p>4 Q. Ms. Shaw, please answer my question. In your</p> <p>5 charge, where you swore to tell the truth, that you</p> <p>6 filed the next day, you don't have anything in here</p> <p>7 about Emelia telling you to go home, do you?</p> <p>8 <b>A. Not in the charge, but she told me.</b></p> <p>9 Q. And this was filed March 26th, 2014, right?</p> <p>10 <b>A. (Moving head up and down.)</b></p> <p>11 Q. Right?</p> <p>12 <b>A. Yes.</b></p> <p>13 Q. Okay. In your charge you say that you rested</p> <p>14 because you felt some pain. Is that true?</p> <p>15 <b>A. Yes.</b></p> <p>16 Q. Okay. So what pain were you feeling on that</p> <p>17 day?</p> <p>18 <b>A. The same pain in my side.</b></p> <p>19 Q. Okay. Describe it for me.</p> <p>20 <b>A. It's just cramps in my side.</b></p> <p>21 Q. Had you felt that pain before?</p> <p>22 <b>A. Yes, when I got home from work.</b></p> <p>23 Q. Okay. How many times had you felt that pain</p> <p>24 in March of 2014?</p> <p>25 <b>A. It's just probably four times.</b></p>	<p style="text-align: right;">72</p> <p>1 <b>so...</b></p> <p>2 Q. Did anybody -- was anybody around when she</p> <p>3 told you that?</p> <p>4 <b>A. There was people but I don't think they were</b></p> <p>5 <b>paying attention to us. They were busy with their own</b></p> <p>6 <b>jobs.</b></p> <p>7 Q. Was Mr. G there in the store when she told you</p> <p>8 to clock out and leave?</p> <p>9 <b>A. He was in the office.</b></p> <p>10 Q. Okay. Well, why wouldn't you have gone over</p> <p>11 and -- and talked to him?</p> <p>12 <b>A. That's what I did. That's why I -- I confirm</b></p> <p>13 <b>to him that I'm -- am I really fired, you know.</b></p> <p>14 Q. All right. Your -- your testimony is that you</p> <p>15 immediately, after Emelia told you to leave, went over</p> <p>16 and talked to Mr. G?</p> <p>17 <b>A. Yes.</b></p> <p>18 Q. Or did you go out to your car first?</p> <p>19 <b>A. I went out to my car.</b></p> <p>20 Q. Why did you go out to your car?</p> <p>21 <b>A. So I can have a -- a evidence that they are</b></p> <p>22 <b>firing me without -- because I need that. I can't just</b></p> <p>23 <b>-- because of my babies' Medicaid, I can't just, you</b></p> <p>24 <b>know, lose the job. I have to have a -- I'm not going</b></p> <p>25 <b>to quit a job.</b></p>
<p style="text-align: right;">71</p> <p>1 Q. When did it start?</p> <p>2 <b>A. That day when I posted on Facebook, the 14th.</b></p> <p>3 Q. Okay. And did you sometimes have it on days</p> <p>4 where you didn't work?</p> <p>5 <b>A. Not really. I did not feel it.</b></p> <p>6 Q. Did you tell anybody at the store that you</p> <p>7 were in pain?</p> <p>8 <b>A. I don't recall.</b></p> <p>9 Q. In your EEOC charge it says that you clocked</p> <p>10 out and then you went upstairs to talk to the head</p> <p>11 manager, Mr. G?</p> <p>12 <b>A. Yes.</b></p> <p>13 Q. Are you sure that that was the same day?</p> <p>14 <b>A. Yes. I went -- I went out -- I was going to</b></p> <p>15 <b>go home, and I saw my phone lying in the car -- in my --</b></p> <p>16 <b>my chair, car -- car chair, so I -- I got an idea of</b></p> <p>17 <b>recording him.</b></p> <p>18 Q. All right. I want to make sure I understand</p> <p>19 the sequence of events, though. You punched out and</p> <p>20 left without telling anybody you were doing that, didn't</p> <p>21 you?</p> <p>22 <b>A. No, because Emelia told me to clock out. He</b></p> <p>23 <b>told -- she told me to clock out. That means I lost --</b></p> <p>24 <b>I don't have a job anymore. She -- I was -- I'm -- I'm</b></p> <p>25 <b>in the clock but she told me to get out of the store,</b></p>	<p style="text-align: right;">73</p> <p>1 Q. How long was it when you punched out until you</p> <p>2 went out to your car and got your phone and came back</p> <p>3 in?</p> <p>4 <b>A. It was just five minutes.</b></p> <p>5 Q. Have you ever secretly tape-recorded anybody</p> <p>6 before?</p> <p>7 <b>A. Never.</b></p> <p>8 Q. This is the first time?</p> <p>9 <b>A. This is the first time.</b></p> <p>10 Q. And your -- your testimony was that you had</p> <p>11 never had any discussions with anybody at Kroger where</p> <p>12 there was a problem before the 25th?</p> <p>13 <b>A. Never.</b></p> <p>14 Q. Right?</p> <p>15 <b>A. Never.</b></p> <p>16 Q. So the first time that Emelia gives you a</p> <p>17 problem, your first thought is to go out to your car and</p> <p>18 grab your phone to secretly record someone?</p> <p>19 <b>A. Because I can't be -- I can't be -- I can't</b></p> <p>20 <b>resign. I can't quit a job. When you have a Medicaid</b></p> <p>21 <b>and you have this government assistance, they need you</b></p> <p>22 <b>to have a job. You need to have a job. They're helping</b></p> <p>23 <b>you for -- because you have a low income, but you have</b></p> <p>24 <b>to have a job. And that's what I understand, so I need</b></p> <p>25 <b>to prove to them that I did not quit my job. They fired</b></p>

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<p style="text-align: right;">74</p> <p>1 me. I want my job. Because we work with the Work</p> <p>2 Source. They -- like, they send us to trainings, you</p> <p>3 know, and -- to get the babies Medicaid.</p> <p>4 Q. So you go out to your car and you get your</p> <p>5 phone. Is it the same phone that you have with you</p> <p>6 today?</p> <p>7 A. No.</p> <p>8 Q. What kind of phone was it?</p> <p>9 A. It was from eBay, which is gone.</p> <p>10 Q. Okay.</p> <p>11 A. It was a cheap phone.</p> <p>12 Q. Was it, like, an iPhone or something?</p> <p>13 A. No.</p> <p>14 Q. Okay. What kind of -- you don't remember what</p> <p>15 kind of phone it was?</p> <p>16 A. It was, like, a copy cat of the Samsung. It</p> <p>17 was an imitation.</p> <p>18 Q. So you got your phone, you brought it back in.</p> <p>19 Where did you hide it?</p> <p>20 A. Like, under my shirt.</p> <p>21 Q. Okay. And did you ask to meet with Mr. G, or</p> <p>22 how did you end up meeting with him?</p> <p>23 A. I just showed up in the office, and I asked if</p> <p>24 he was there. And then Jason said that Meriam was --</p> <p>25 Meriam is here. And then he let me come in, and I start</p>	<p style="text-align: right;">76</p> <p>1 Q. Okay. Did he -- did he mention Emelia in the</p> <p>2 conversation?</p> <p>3 A. No, I did. I told her -- him about Emelia</p> <p>4 saying that I don't have -- she can't keep me.</p> <p>5 Q. Do you know if Mr. G had seen your doctor's</p> <p>6 note at this point?</p> <p>7 A. I guess he -- I guess he did, because the way</p> <p>8 he told me, he said about my restriction.</p> <p>9 Q. Okay. But do you -- do you know if Emelia had</p> <p>10 given the -- your doctor's note to Mr. G by the time you</p> <p>11 had that meeting with him?</p> <p>12 A. He -- he must have.</p> <p>13 Q. Okay. Well, why would he must have? How do</p> <p>14 you know that?</p> <p>15 A. Because he told me when I recorded him that --</p> <p>16 that my restriction, I can't -- Nobody works in my</p> <p>17 store, like, with that restriction.</p> <p>18 Q. Did he have the paper in the meeting?</p> <p>19 A. He did not.</p> <p>20 Q. Okay. You didn't see the paper in the meeting</p> <p>21 with Mr. G?</p> <p>22 A. No.</p> <p>23 Q. You don't know what Emelia did with it?</p> <p>24 A. I don't know.</p> <p>25 Q. Did anybody tell you or recommend that you</p>
<p style="text-align: right;">75</p> <p>1 asking him, you know, if I can keep my job, because</p> <p>2 Emelia, they're not communicating and she just fired me.</p> <p>3 Q. Okay. Here's what we're going to do. In this</p> <p>4 -- your lawyer has given me a copy of the tape, so we're</p> <p>5 going to play -- play it here in a minute. But first I</p> <p>6 would like to ask you some questions about that. Have</p> <p>7 you ever talked to Mr. G before?</p> <p>8 A. Before?</p> <p>9 Q. Before that meeting on the 25th of March.</p> <p>10 A. The one on the recording?</p> <p>11 Q. Yeah.</p> <p>12 A. The only time I would say, Hey, Hello, and</p> <p>13 then the -- the time that he asked me for the note.</p> <p>14 Q. Okay. The conversation on the 25th, how long</p> <p>15 did it take?</p> <p>16 A. Probably 12 -- 10 minutes, 12 minutes.</p> <p>17 Q. And where did it take place?</p> <p>18 A. In his office.</p> <p>19 Q. Was anybody else there?</p> <p>20 A. Jason was there.</p> <p>21 Q. What about Emelia?</p> <p>22 A. She was not there.</p> <p>23 Q. Did Mr. G already know about your conversation</p> <p>24 with Emelia?</p> <p>25 A. He sounded like he's expecting it.</p>	<p style="text-align: right;">77</p> <p>1 tape this conversation?</p> <p>2 A. No.</p> <p>3 Q. Did you have any conversations with your</p> <p>4 husband or anybody else about the fact that you were</p> <p>5 going to tape this conversation?</p> <p>6 A. No.</p> <p>7 Q. This was all your idea?</p> <p>8 A. My idea.</p> <p>9 Q. Do you know if it's lawful to tape a</p> <p>10 conversation, with people not knowing that they're being</p> <p>11 taped?</p> <p>12 A. I don't know.</p> <p>13 Q. So it could be illegal and you could go to</p> <p>14 jail?</p> <p>15 A. Yes.</p> <p>16 Q. You never asked anybody if it was legal in</p> <p>17 Texas to do that?</p> <p>18 A. I never asked.</p> <p>19 Q. Do you know if it's a violation of Kroger</p> <p>20 policy to tape other people in the store without them</p> <p>21 knowing they're being taped?</p> <p>22 A. I didn't know. I -- I don't know.</p> <p>23 Q. Would you want somebody taping you in the</p> <p>24 workplace without you knowing?</p> <p>25 A. I don't mind. I'm not going to say anything</p>

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<p style="text-align: right;">82</p> <p>1 husband about, Hey, I'm going to go back in and tape</p> <p>2 Mr. G?</p> <p>3 <b>A. I told him --</b></p> <p>4 MR. COSTEA: Well, hold on. Hold on one</p> <p>5 second. We are getting into conversations between the</p> <p>6 husband and the wife, and those conversations are</p> <p>7 privileged by the spousal communication privilege. I'm</p> <p>8 going to instruct the witness, my client, not to</p> <p>9 disclose any conversation that she had with her husband.</p> <p>10 Do you understand what I just said,</p> <p>11 Ms. Shaw?</p> <p>12 THE WITNESS: Yes.</p> <p>13 MR. COSTEA: Okay.</p> <p>14 Q. (By Mr. Barron) Ms. Shaw, when you went out</p> <p>15 to your husband who was picking you up, how much time</p> <p>16 did you spend in the car?</p> <p>17 <b>A. I didn't spend any time. I just grabbed my</b></p> <p>18 <b>phone.</b></p> <p>19 Q. So you're not feeling well at this point,</p> <p>20 right? Is that your testimony?</p> <p>21 <b>A. Yes.</b></p> <p>22 Q. You're sick, your -- your side hurts, right?</p> <p>23 <b>A. Yes, but I can still walk.</b></p> <p>24 Q. Okay. So your -- your side hurts, you're not</p> <p>25 feeling good, you complained, your babies are sitting in</p>	<p style="text-align: right;">84</p> <p>1 you hear him say that?</p> <p>2 <b>A. I walked out to get my phone.</b></p> <p>3 Q. You -- you really, under oath, are saying that</p> <p>4 he was talking about you walking out to get your phone</p> <p>5 and not walking off the job?</p> <p>6 <b>A. I did not walk out from my job.</b></p> <p>7 Q. Well, Mr. G thought you walked off the job,</p> <p>8 didn't he?</p> <p>9 <b>A. He thought -- Emelia told me to clock me --</b></p> <p>10 <b>clock out.</b></p> <p>11 Q. Okay.</p> <p>12 (Playing audio file.)</p> <p>13 Q. (By Mr. Barron) Okay. I'm going to stop it</p> <p>14 right there. You asked Mr. G whether you could keep</p> <p>15 your job, right?</p> <p>16 <b>A. (Moving head up and down.)</b></p> <p>17 Q. And he told you, he says, I don't know, I need</p> <p>18 to talk to Human Resources, right?</p> <p>19 <b>A. (Moving head up and down.)</b></p> <p>20 Q. Okay. Is that a "yes"?</p> <p>21 <b>A. Yes.</b></p> <p>22 Q. He never told you you were fired, did he?</p> <p>23 <b>A. Yes.</b></p> <p>24 Q. He did?</p> <p>25 <b>A. He did.</b></p>
<p style="text-align: right;">83</p> <p>1 the car, your husband is waiting for you, and yet you</p> <p>2 decided to go back in with your phone to tape Mr. G. Is</p> <p>3 that what happened?</p> <p>4 <b>A. That's because she -- he said I can't --</b></p> <p>5 <b>Emelia said I can't go back to work. He said -- she</b></p> <p>6 <b>said, I -- I -- she can't keep me. And if I'll just go</b></p> <p>7 <b>home without any clarification, then I don't have a job.</b></p> <p>8 Q. Well --</p> <p>9 <b>A. That means I can't -- I don't have a job</b></p> <p>10 <b>anymore.</b></p> <p>11 Q. Why wouldn't you have just gone and talked to</p> <p>12 Mr. G before you walked out?</p> <p>13 <b>A. I just have a feeling they're not -- they</b></p> <p>14 <b>don't like me there anymore.</b></p> <p>15 Q. All right. Let's listen to some more of the</p> <p>16 tape.</p> <p>17 (Playing audio file.)</p> <p>18 Q. (By Mr. Barron) Okay. I hear you talking</p> <p>19 there. Do you know who you were talking to? Did you</p> <p>20 hear that?</p> <p>21 <b>A. That was Jason.</b></p> <p>22 Q. Okay.</p> <p>23 (Playing audio file.)</p> <p>24 Q. (By Mr. Barron) Okay. The first thing he</p> <p>25 said -- Mr. G said was, You just walked out, right? Did</p>	<p style="text-align: right;">85</p> <p>1 Q. I mean, you recorded it. You should know,</p> <p>2 right?</p> <p>3 <b>A. He did not, but Emelia did.</b></p> <p>4 Q. Okay. So just so we're clear, Mr. G never</p> <p>5 told you you were fired --</p> <p>6 <b>A. Not --</b></p> <p>7 Q. -- on March 25th, correct?</p> <p>8 <b>A. Not Mr. G.</b></p> <p>9 Q. In fact, he told you the opposite. He said, I</p> <p>10 don't know. I need to check with HR because you've</p> <p>11 given me these restrictions, right?</p> <p>12 <b>A. Yes.</b></p> <p>13 (Playing audio file.)</p> <p>14 Q. (By Mr. Barron) Ms. Shaw, you were asking</p> <p>15 that if employees get pregnant they're not allowed to</p> <p>16 work. Is that what you were going to ask him?</p> <p>17 <b>A. (Moving head up and down.)</b></p> <p>18 Q. Is that a "yes"?</p> <p>19 <b>A. Yes, that's what I tried to ask him, if</b></p> <p>20 <b>somebody get pregnant if they're just going to fire</b></p> <p>21 <b>them.</b></p> <p>22 Q. And -- and you knew you were tape-recording</p> <p>23 the conversation, right?</p> <p>24 <b>A. Yes.</b></p> <p>25 Q. You were trying to set him up. You wanted him</p>

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<p style="text-align: right;">86</p> <p>1 to say that -- that Kroger fires employees that are</p> <p>2 pregnant, didn't you?</p> <p>3 MR. COSTEA: Objection, form.</p> <p>4 A. I -- I am comparing my -- my -- my status and</p> <p>5 giving him example, like me, I'm pregnant. Is that what</p> <p>6 they do to all pregnant employees?</p> <p>7 Q. (By Mr. Barron) Why would you -- why would</p> <p>8 you even ask that?</p> <p>9 A. Because why would they fire me? Why would</p> <p>10 Emelia fire me? I just got pregnant, and I can still do</p> <p>11 my job.</p> <p>12 Q. Well, you -- you just brought Kroger a</p> <p>13 doctor's note that says you can't do your job, right?</p> <p>14 MR. COSTEA: Objection, form.</p> <p>15 A. No.</p> <p>16 Q. (By Mr. Barron) Well, let me back you up,</p> <p>17 back it up a couple of steps here. You agree that it</p> <p>18 was your job at Kroger to lift things more than 15</p> <p>19 pounds, right?</p> <p>20 A. When -- when I wasn't pregnant, I applied, I</p> <p>21 wasn't pregnant and, yes, I could do that job.</p> <p>22 Q. I understand. But you -- you were given a</p> <p>23 document that said it's part of your essential job</p> <p>24 functions as a sacker to lift regularly things that</p> <p>25 weigh more than 15 pounds, right?</p>	<p style="text-align: right;">88</p> <p>1 15 pounds, right?</p> <p>2 A. Yeah, but cashier don't lift it. If they --</p> <p>3 if they would give me a different job which I can do,</p> <p>4 they can train me for anything else, you know.</p> <p>5 Q. Is your testimony that the cashier doesn't</p> <p>6 have to lift bags of dog food or cases of water?</p> <p>7 A. They don't have to lift it. They have this --</p> <p>8 a handheld scanner that they just scan it, and baggers</p> <p>9 are the one bagging it, you know.</p> <p>10 Q. But on occasion they do have to lift those</p> <p>11 things, don't they?</p> <p>12 MR. COSTEA: Objection, form.</p> <p>13 A. Not if they want to, no.</p> <p>14 Q. (By Mr. Barron) Well, if you get -- if the</p> <p>15 bag of dog food is upside down and you can't get to the</p> <p>16 UPC code to scan it, someone is going to have to lift it</p> <p>17 up and turn it over, right?</p> <p>18 A. And it's the baggers.</p> <p>19 Q. And if there's not a bagger around, who has to</p> <p>20 do it?</p> <p>21 MR. COSTEA: Objection, form.</p> <p>22 Q. (By Mr. Barron) It would be the cashier,</p> <p>23 correct?</p> <p>24 A. No.</p> <p>25 Q. Let's continue.</p>
<p style="text-align: right;">87</p> <p>1 A. If I'm not pregnant?</p> <p>2 Q. Do you -- do you think that that -- that job</p> <p>3 description doesn't apply to you if you're pregnant?</p> <p>4 A. Yes, it applies to me, but they should not</p> <p>5 fire me because I'm pregnant. I can still do my job.</p> <p>6 Q. And no -- and Mr. G did not tell you you were</p> <p>7 fired at any point in that conversation?</p> <p>8 A. I told you Emelia told me, and she -- I follow</p> <p>9 her because she is my supervisor.</p> <p>10 Q. Well, Mr. G is above Emelia, right?</p> <p>11 A. But they did not talk to each other about</p> <p>12 firing me. Why would Emelia fire me and not Mr. G?</p> <p>13 MR. BARRON: Objection, nonresponsive.</p> <p>14 Q. (By Mr. Barron) Mr. G is above Emelia,</p> <p>15 correct?</p> <p>16 A. Above Emelia; but he did not say, yes, you're</p> <p>17 welcome to work in my store. He -- he obviously said --</p> <p>18 it's the same thing he said, that, Nobody works in my</p> <p>19 store that can't lift 15 pounds.</p> <p>20 Q. He -- and he told you why, didn't he? Because</p> <p>21 everything that goes through -- not everything, but many</p> <p>22 things that go through --</p> <p>23 A. It's not true.</p> <p>24 Q. Hold on. He told you why, which was that many</p> <p>25 things that go through the check stand weigh more than</p>	<p style="text-align: right;">89</p> <p>1 (Playing audio file.)</p> <p>2 Q. (By Mr. Barron) Let me stop it there. Mr. G</p> <p>3 asked you if you told your doctor what you did, and you</p> <p>4 said no.</p> <p>5 A. Continue it. I said yes.</p> <p>6 (Playing audio file.)</p> <p>7 Q. (By Mr. Barron) So your testimony is you told</p> <p>8 him that -- you told your doctor that you were a bagger?</p> <p>9 A. Yes. She asked me, so I told her what I do.</p> <p>10 Q. Okay. And knowing full well what you did, the</p> <p>11 doctor still put a lifting restriction of 15 pounds on</p> <p>12 you, right?</p> <p>13 A. Yes, and it's not my fault that she put that.</p> <p>14 (Playing audio file.)</p> <p>15 Q. (By Mr. Barron) So in -- in this part of the</p> <p>16 tape Mr. G tells you that you could go back to your</p> <p>17 doctor and talk to your doctor about whether that's a</p> <p>18 good restriction for you, whether that really is what</p> <p>19 you need; and if it changes then you could come back,</p> <p>20 right?</p> <p>21 A. (Moving head up and down.)</p> <p>22 Q. Is that a "yes"?</p> <p>23 A. Yes, he said that.</p> <p>24 Q. Did you ever go back to Dr. Lowery and have a</p> <p>25 talk with her about your restrictions?</p>

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<p style="text-align: right;">90</p> <p>1 A. No.</p> <p>2 Q. Why not?</p> <p>3 A. Because Emelia already fired me, and I have to</p> <p>4 deal with Emelia. She is the supervisor.</p> <p>5 Q. So you never even tried to go talk to your</p> <p>6 doctor about your restrictions and see if the -- these</p> <p>7 restrictions were really necessary?</p> <p>8 A. I did not try.</p> <p>9 (Playing audio file.)</p> <p>10 Q. (By Mr. Barron) I'm going to stop it there.</p> <p>11 You -- on the tape you ask Mr. G for something in</p> <p>12 writing.</p> <p>13 A. That I am terminated.</p> <p>14 Q. All right. Why would you ask him for that?</p> <p>15 A. Because I need that for my -- for the Work</p> <p>16 Source, because I have Medicaid and it -- it's going to</p> <p>17 -- hard for me to get the benefits without having a job,</p> <p>18 because they will give you extension to look for a job</p> <p>19 if you did not quit your job.</p> <p>20 Q. Okay.</p> <p>21 A. And I -- I don't quit my job.</p> <p>22 Q. How did you know that you needed that document</p> <p>23 before that day? Because you had never had a job in --</p> <p>24 in the United States.</p> <p>25 A. My husband did -- lost his job, and so we had</p>	<p style="text-align: right;">92</p> <p>1 A. That's what he thinks.</p> <p>2 Q. And you never told him, That's wrong. Emelia</p> <p>3 told me to leave, right?</p> <p>4 A. I told -- I told him that Emelia told me she</p> <p>5 can't keep me. That's why I went there to confirm with</p> <p>6 him. That's the reason I went there.</p> <p>7 Q. You never said, Mr. G, you got it wrong. I</p> <p>8 didn't walk off the job. You never told him that, did</p> <p>9 you?</p> <p>10 A. I never did, yes.</p> <p>11 (Playing audio file.)</p> <p>12 Q. (By Mr. Barron) The other voice at the very</p> <p>13 end of the tape talking, is that your husband?</p> <p>14 A. (Moving head up and down.)</p> <p>15 Q. And that was your baby we could hear crying in</p> <p>16 the back -- background?</p> <p>17 A. Uh-huh.</p> <p>18 Q. And he asked you, What did they say, right?</p> <p>19 A. Yes.</p> <p>20 Q. We heard him on the tape say that, right?</p> <p>21 A. Yes.</p> <p>22 Q. And you said, Shh, right?</p> <p>23 A. Yes.</p> <p>24 Q. Because you didn't want your conversation with</p> <p>25 your husband to be taped --</p>
<p style="text-align: right;">91</p> <p>1 to deal with that, you know, for -- to get the babies.</p> <p>2 (Playing audio file.)</p> <p>3 Q. (By Mr. Barron) Did you hear Mr. G say that</p> <p>4 you were the one who walked out earlier? Did you hear</p> <p>5 that on the tape?</p> <p>6 A. I did not walk out. Emelia told me to clock</p> <p>7 out.</p> <p>8 Q. Okay. You did not say anything back to Mr. G</p> <p>9 that, Oh, I didn't work out -- I didn't walk out, did</p> <p>10 you?</p> <p>11 A. I told him that Emelia told me to clock out --</p> <p>12 Q. You --</p> <p>13 A. -- that she can't keep me in the job.</p> <p>14 Q. Is your testimony that you told him that on</p> <p>15 the tape?</p> <p>16 A. Not on the tape.</p> <p>17 Q. Well, you taped the entire conversation,</p> <p>18 didn't you?</p> <p>19 A. Yes.</p> <p>20 Q. So you never --</p> <p>21 A. With Mr. -- with Mr. G, yes; with Emelia I</p> <p>22 didn't tape her.</p> <p>23 Q. I understand. But Mr. G clearly was under the</p> <p>24 impression that you walked off the job, right, because</p> <p>25 that's what he just said. We all heard him, right?</p>	<p style="text-align: right;">93</p> <p>1 A. Well --</p> <p>2 Q. -- right?</p> <p>3 A. -- it's not none of other people's business.</p> <p>4 Q. Right. You wanted to make sure you turned it</p> <p>5 off so that we couldn't hear what you were going to</p> <p>6 have -- talk with your husband about, right?</p> <p>7 A. Yeah, he just asked about the papers. Because</p> <p>8 he didn't know I was going to tape him. I was just</p> <p>9 going to ask him for the papers.</p> <p>10 Q. What papers were you supposed to ask about?</p> <p>11 A. For the -- the -- for terminating me, that I'm</p> <p>12 not employed anymore.</p> <p>13 Q. Why would your husband want termination</p> <p>14 papers?</p> <p>15 A. Because we need it for -- like I said, for --</p> <p>16 when he lost his job, we can only get, like, extension,</p> <p>17 they give you a training. You have to prove that --</p> <p>18 that you don't quit your job.</p> <p>19 Q. So if you got termination papers from Kroger,</p> <p>20 you would have been able to stay on the benefits without</p> <p>21 having a job for a period of time, right?</p> <p>22 A. For probably one month. They -- but they --</p> <p>23 they send you to training. Like, you have to volunteer</p> <p>24 for Goodwill, you have to volunteer for the, you know,</p> <p>25 government stuff, while you're looking for a job.</p>

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<p style="text-align: right;">94</p> <p>1 Q. So it was important to you to get that paper, 2 right?</p> <p>3 <b>A. Yeah, for the babies.</b></p> <p>4 Q. So we've already established that you did not 5 go back to your doctor to ask for any sort of change to 6 your restrictions, right?</p> <p>7 <b>A. No, yeah.</b></p> <p>8 Q. Even though that's what Mr. G told you you 9 needed to do if you wanted to have any further 10 discussion about working at Kroger, right?</p> <p>11 <b>A. Yes.</b></p> <p>12 Q. Yet the next day you called and -- and talked 13 to Jason Poiras, right?</p> <p>14 <b>A. Yes.</b></p> <p>15 Q. And you taped that conversation, as well?</p> <p>16 <b>A. Yes.</b></p> <p>17 Q. Why?</p> <p>18 <b>A. To confirm that I don't have a job there 19 anymore.</b></p> <p>20 Q. But he didn't tell you that, did he?</p> <p>21 <b>A. He said if I go back to my doctor and change 22 my restriction.</b></p> <p>23 Q. Well, he told you the same thing that Mr. G 24 told you.</p> <p>25 <b>A. Yes.</b></p>	<p style="text-align: right;">96</p> <p>1 like that.</p> <p>2 Q. Have you ever hired a lawyer before? Have you 3 ever hired a lawyer before?</p> <p>4 <b>A. Never.</b></p> <p>5 Q. How did you find Mr. Petrou?</p> <p>6 <b>A. I just Googled.</b></p> <p>7 Q. And you called up, and he happened to have an 8 appointment -- appointment available for you that same 9 day?</p> <p>10 <b>A. Yes.</b></p> <p>11 Q. And --</p> <p>12 <b>A. I think I called him before that, like when I 13 got home, like before the appointment of that day. I -- 14 I don't recall what day I called him, but he --</b></p> <p>15 Q. Well, I would kind of like to know. When -- 16 when -- when is the best recollection of when you called 17 Mr. Petrou?</p> <p>18 <b>A. Probably in that afternoon of -- that they 19 fired me, because I went -- I came home, I start 20 Googling stuff, what can I do.</b></p> <p>21 Q. All right. So you think -- your best 22 recollection is you talked to him on the 25th and you 23 met with him on the 26th?</p> <p>24 <b>A. Yes.</b></p> <p>25 Q. Okay. And on the -- the 26th you signed the</p>
<p style="text-align: right;">95</p> <p>1 Q. All right. Let's listen to that one. By the 2 way, before we get too far into it, where were you when 3 you had this conversation with Jason?</p> <p>4 <b>A. I went -- I went -- consult a lawyer, what to 5 do. Because I was searching in Google and what's my 6 right and what can I do. And so I end up reading the 7 EEOC stuff and Google, and I just went, consult a lawyer 8 that can help me.</b></p> <p>9 Q. Okay. So your conversation with Jason was the 10 day after your -- your conversation with Mr. G, right?</p> <p>11 <b>A. The next day, yeah.</b></p> <p>12 Q. Right. That's also the day you filed your 13 EEOC charge, Exhibit 5, correct?</p> <p>14 <b>A. Yes, my -- the attorney filed it for me.</b></p> <p>15 Q. Who was the attorney?</p> <p>16 <b>A. Steve Petrou.</b></p> <p>17 Q. That's a different attorney than Mr. Costea?</p> <p>18 <b>A. That's different. He got sick.</b></p> <p>19 Q. Did you actually visit with Mr. Petrou on the 20 26th?</p> <p>21 <b>A. Yes.</b></p> <p>22 Q. You went to his office?</p> <p>23 <b>A. Yes.</b></p> <p>24 Q. How long did you meet with him?</p> <p>25 <b>A. Probably an hour to -- hour or two, something</b></p>	<p style="text-align: right;">97</p> <p>1 EEOC charge?</p> <p>2 <b>A. Yes.</b></p> <p>3 Q. But you were not physically at the EEOC's 4 offices?</p> <p>5 <b>A. No, that was in -- in his office.</b></p> <p>6 Q. Did you call Jason from his office?</p> <p>7 <b>A. Yes.</b></p> <p>8 Q. Were there any witnesses, other than you and 9 your lawyer, to that conversation with Jason?</p> <p>10 <b>A. No.</b></p> <p>11 Q. Was your lawyer listening in?</p> <p>12 <b>A. Yes.</b></p> <p>13 <b>(Playing audio file.)</b></p> <p>14 Q. (By Mr. Barron) Let me stop you there. On 15 the tape you had asked for Emelia. Why did you ask for 16 Emelia?</p> <p>17 <b>A. Because she's the one that fired me.</b></p> <p>18 Q. But she's not the store manager, right?</p> <p>19 <b>A. But she's my supervisor. I have to 20 communicate with her. She is like --</b></p> <p>21 Q. She's a --</p> <p>22 <b>A. She's my main supervisor.</b></p> <p>23 Q. What was her position, do you know?</p> <p>24 <b>A. All they say is I have to deal with her. 25 She's my supervisor.</b></p>

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<p style="text-align: right;">102</p> <p>1 A. -- won't take my case --</p> <p>2 MR. COSTEA: Excuse me. Excuse me.</p> <p>3 Excuse me. Don't talk over one another, and do not</p> <p>4 disclose anything that your attorney has said to you.</p> <p>5 Q. (By Mr. Barron) Go ahead. You can answer the</p> <p>6 question.</p> <p>7 A. No.</p> <p>8 Q. You're not going to answer my question?</p> <p>9 A. Emelia fired me, and that's all. Because they</p> <p>10 will not work with me, and they just fired me because</p> <p>11 I'm pregnant. They don't want to pay -- they don't want</p> <p>12 to take a risk of me getting hurt, because they said</p> <p>13 they're going to -- you know, Kroger will have to pay</p> <p>14 the doctor if I get hurt, if I take -- stay there and</p> <p>15 work as being pregnant.</p> <p>16 MR. BARRON: I'm going to object to that</p> <p>17 as being nonresponsive.</p> <p>18 Q. (By Mr. Barron) Jason, on the tape, told you</p> <p>19 specifically that you were not fired, right?</p> <p>20 A. Because he didn't know what Emelia said. They</p> <p>21 don't communicate.</p> <p>22 Q. He told you you were not fired, correct?</p> <p>23 A. No.</p> <p>24 Q. That's not what he told you?</p> <p>25 A. And I told him, Emelia told me I was fired.</p>	<p style="text-align: right;">104</p> <p>1 A. And they asked that.</p> <p>2 Q. Hold on. Let me finish my question.</p> <p>3 You didn't have any problems at Kroger</p> <p>4 until you brought them a note that said you can't lift</p> <p>5 more than 15 pounds, right?</p> <p>6 A. And why they have to ask me a note? Is that</p> <p>7 necessary, the note? Why they have to ask me to bring</p> <p>8 the note?</p> <p>9 Q. So that --</p> <p>10 A. I was just pregnant, and I can still do my</p> <p>11 job. It started when I give the -- Mr. G asked the</p> <p>12 note, and I give the note, I give what they want. And</p> <p>13 then instead of just, you know, bringing me in the</p> <p>14 office, talking to me nicely -- I was probably more</p> <p>15 emotional because I'm pregnant. Instead of, you know,</p> <p>16 just, Okay, you know, let's talk. Go -- if they're nice</p> <p>17 to me, I -- I would probably go to my doctor and say,</p> <p>18 Can you please take off that restriction? Because I</p> <p>19 need a job. And they were not nice to me. So I feel</p> <p>20 like I was humiliated, like, in front of the store and</p> <p>21 just, you know. So I look up my rights, and that's the</p> <p>22 reason why I went online and just read and study what I</p> <p>23 can do.</p> <p>24 Q. Okay.</p> <p>25 (Playing audio file.)</p>
<p style="text-align: right;">103</p> <p>1 Q. Well, I guess the tape speaks for itself.</p> <p>2 (Playing audio file.)</p> <p>3 Q. (By Mr. Barron) Let me stop you there. Where</p> <p>4 did you get the word "accommodation" from?</p> <p>5 A. I read it in the EEOC --</p> <p>6 Q. Okay. So you --</p> <p>7 A. -- when I Googled.</p> <p>8 Q. So you studied up in the --</p> <p>9 A. Yes.</p> <p>10 Q. -- In the day that you had between the -- the</p> <p>11 conversation with Mr. G and the conversation with --</p> <p>12 with Jason?</p> <p>13 A. Yes. The thing is I -- when I handed her the</p> <p>14 note, she should just have went to Mr. G and talked</p> <p>15 about my situation, rather than just close the door on</p> <p>16 me, just shut me out and just, Get out, and you're not</p> <p>17 welcome here. That's the reason why I -- I felt</p> <p>18 horrible. Because I -- it -- I worked hard to get the</p> <p>19 job. Even just a bagger, their process of hiring you is</p> <p>20 not easy. And -- and just like saying, Okay, you're</p> <p>21 pregnant, good-bye, you know, it's -- it's not easy.</p> <p>22 Q. Well, ma'am, no one ever said that, Because</p> <p>23 you're pregnant, good-bye. In fact, you didn't have any</p> <p>24 issues at all at Kroger until you brought them a note</p> <p>25 that said you can't --</p>	<p style="text-align: right;">105</p> <p>1 Q. (By Mr. Barron) Okay. That's the end of the</p> <p>2 recording. Did you tape any other conversations with</p> <p>3 Kroger employees?</p> <p>4 A. No more.</p> <p>5 MR. BARRON: Okay. Let's take a break.</p> <p>6 THE VIDEOGRAPHER: We're going off the</p> <p>7 record, approximately 12:49 p.m.</p> <p>8 (Brief recess.)</p> <p>9 THE VIDEOGRAPHER: We're coming back on</p> <p>10 the record, approximately 1:01 p.m.</p> <p>11 Q. (By Mr. Barron) Ms. Shaw, you understand</p> <p>12 we're back on the record and you're still under oath?</p> <p>13 A. Yes.</p> <p>14 Q. After you spoke to Jason Poitras on the phone</p> <p>15 at your lawyer's office, did you ever speak with anybody</p> <p>16 at Kroger again?</p> <p>17 A. No, not that -- I don't -- not that I</p> <p>18 remember.</p> <p>19 Q. And you never brought back any sort of</p> <p>20 additional doctor's notes or -- or documentation --</p> <p>21 A. No.</p> <p>22 Q. -- to Kroger?</p> <p>23 A. No.</p> <p>24 Q. How did you find out that you were officially</p> <p>25 separated from Kroger?</p>

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<p>1</p> <p>2 IN THE UNITED STATES DISTRICT COURT</p> <p>3 FOR THE SOUTHERN DISTRICT OF TEXAS</p> <p>4 HOUSTON DIVISION</p> <p>5 MERIAM SHAW )</p> <p>6 )</p> <p>7 VS. ) CIVIL ACTION NO.</p> <p>8 ) 4:16-CV-01163</p> <p>9 KROGER TEXAS, LP )</p> <p>10</p> <p>11 REPORTER'S CERTIFICATION TO THE</p> <p>12 DEPOSITION OF MERIAM SHAW</p> <p>13 TAKEN ON JANUARY 18, 2017</p> <p>14 I, MYLINDA TUBBS FAIRCLOTH, Certified Shorthand</p> <p>15 Reporter in and for the State of Texas, hereby certify</p> <p>16 to the following:</p> <p>17 That the witness, MERIAM SHAW was duly sworn by the</p> <p>18 officer and that the transcript of the oral deposition</p> <p>19 is a true record of the testimony given by the witness.</p> <p>20 That the deposition transcript was made available</p> <p>21 on January 31, 2017 to the witness or to the attorney</p> <p>22 for the witness for examination, signature, and return</p> <p>23 to Advantage Reporting Service by March 3, 2017.</p> <p>24 That the amount of time used by each party at the</p> <p>25 deposition is as follows:</p> <p>Mr. Peter Costea - (no time used);</p> <p>Mr. David L. Barron - 2 hours, 40 minutes.</p> <p>That pursuant to information given to the</p> <p>deposition officer at the time said testimony was taken,</p> <p>the following includes all parties of record:</p> <p>Mr. Peter Costea, Attorney for Plaintiff;</p>	<p>1 COURT REPORTER'S FURTHER CERTIFICATION</p> <p>2 The original deposition transcript or Changes and</p> <p>3 Signature page ____ was or ____ was not returned to the</p> <p>4 deposition officer. If returned, date received:</p> <p>5 _____;</p> <p>6 If returned, the attached Changes and Signature</p> <p>7 page contains any changes and the reasons therefor;</p> <p>8 If returned, the original deposition transcription</p> <p>9 was delivered to Mr. David L. Barron for safekeeping on</p> <p>10 _____;</p> <p>11 That a copy of this certificate was served on all</p> <p>12 parties shown herein.</p> <p>13 Witness my hand this ____ day of _____</p> <p>14 2017.</p> <p>15</p> <p>16</p> <p>17 MYLINDA TUBBS FAIRCLOTH, CSR</p> <p>18 Certification No. 2896</p> <p>19 Expiration Date: 12-31-18</p> <p>20 ADVANTAGE REPORTING SERVICE</p> <p>21 Registration No. 378</p> <p>22 P.O. Box 169</p> <p>23 Tomball, Texas 77377</p> <p>24 281.376.9303</p> <p>25 Fax 281.376.7117</p>
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<p>1 Mr. David L. Barron, Attorney for Defendant.</p> <p>2 I further certify that I am neither counsel for,</p> <p>3 related to, nor employed by any of the parties in the</p> <p>4 action in which this proceeding was taken, and further</p> <p>5 that I am not financially or otherwise interested in the</p> <p>6 outcome of this action.</p> <p>7 Further certification requirements will be</p> <p>8 certified to after they have occurred.</p> <p>9 Sworn to by me this 31st day of January, 2017.</p> <p>10</p> <p>11</p> <p>12 MYLINDA TUBBS FAIRCLOTH, CSR</p> <p>13 Certification No. 2896</p> <p>14 Expiration Date: 12-31-18</p> <p>15 ADVANTAGE REPORTING SERVICE</p> <p>16 Registration No. 378</p> <p>17 P.O. Box 169</p> <p>18 Tomball, Texas 77377</p> <p>19 281.376.9303</p> <p>20 Fax 281.376.7117</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	

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